

Donald S. Edgar, Esq. (State Bar No. 139324)
Jeremy R. Fietz, Esq. (State Bar No. 200396)
Rex Grady, Esq. (State Bar No. 232236)
EDGAR LAW FIRM
408 College Avenue
Santa Rosa, CA 95401
Telephone: (707) 545-3200
Facsimile: (707) 578-3040

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

DYLAN LAMM, a minor by and through
his guardian ad litem MARY CATHERINE
DOHERTY; and KEVIN LAMM,

Plaintiffs,

v.

BUMBO, BUMBO LIMITED, BUMBO
(PTY) LTD.; TARGET CORPORATION;
and DOES 1 to 20,

Defendants.

CASE NO.: CV 07-04807 MHP

**ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES
SHOULD BE RELATED; DECLARATION
OF JEREMY R. FIETZ IN SUPPORT
THEREOF; AND PROPOSED ORDER**

Complaint Filed: August 16, 2007

Pursuant to Local Rule 3-12, Plaintiffs, DYLAN LAMM, a minor by and through his guardian ad litem MARY CATHERINE DOHERTY; and KEVIN LAMM ("Plaintiffs") hereby submit that the above-captioned matter is related to *Wendy Whitson v. Bumbo, et al.*, Case No. C 07-04012, which was filed in this Court on November 2, 2007 and is presently pending before Judge Wilken. The cases are related in that the primary allegations in each case are that the Bumbo Baby Sitter (a foam infant seat which was recently the subject of a Consumer Product Safety Commission recall since the filing of the within case), is a

1 dangerous/defective product, that it is unsafe for its intended purpose, and/or that its
2 warnings are/have been inadequate to provide the public with proper instruction as to its
3 proper use. While the damages are different in each case (the within case seeks personal
4 injury damages for an injured baby, the *Whitson* case seeks class wide restitution for the
5 purchasers of the defective product, and both cases seek injunctive relief), the liability
6 issues in the cases are practically identical – Is this product defective? Are/were the
7 warnings adequate?

8 In addition to identical liability issues, both actions involve the same Plaintiffs'
9 counsel, the same defendants, and the same defense counsel. Both cases, on their face,
10 are likely to require identical expert witness testimony concerning the safety and fitness of
11 the product, and experts concerning the adequacy of warnings on the product. There are
12 likely to be motions before the Court concerning those experts' opinions, the admissibility
13 of the manufacture's actions in recalling the product subsequent to the filing of the within
14 lawsuit, and discovery motions concerning the production of records from the
15 manufacturer. In other words, it is respectfully submitted that the Northern District's judicial
16 resources will be clearly wasted if these matters are not related. (If related, counsel for
17 Plaintiffs, intend to file a motion to formally consolidate the two cases for further judicial
18 economy and sufficiency.) In short, the actions concern the same issues and it appears
19 likely that there will be an unduly burdensome duplication of labor and expense or
20 conflicting results if the cases are conducted before different Judges. See Local Rule 3-
21 12(a)(1-2).

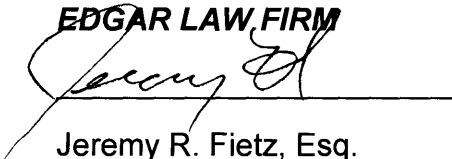
22 Pursuant to Local Rule 7-11, counsel for Plaintiffs requested that counsel for
23 Defendant Target in the above-captioned matter and in *Whitson v. Bumbo* stipulate that
24 the cases are related. Counsel for Target, Gail Trabish, indicated that she would need to
25 obtain authority from her client concerning their position on this issue and requested a
26 couple of days to do so. Several days later, Ms. Trabish indicated that she was still unable
27 to take a position one way or the other concerning the propriety of relating the two cases.
28

1 Counsel for Bumbo have not entered an appearance in this case, and have only made a
2 special appearance in the *Whitson* case in an effort to quash service to avoid answering
3 the Complaint. As a professional courtesy the within brief is being sent to counsel that has
4 specially appeared for Bumbo (PTY) LTD. in the *Whitson* case.

5
6 DATED: January 3, 2007

Respectfully submitted,

7 **EDGAR LAW FIRM**

8 
9 Jeremy R. Fietz, Esq.

10
11 **DECLARATION OF JEREMY R. FIETZ, ESQ.**

12 I, Jeremy R. Fietz, declare:

13 1. I am a partner with the Edgar Law Firm, attorneys of record for Plaintiffs in the above-
14 captioned matter and in *Wendy Whitson v. Bumbo, et al.*, Case No. C 07-04012 CW. I
15 have personal knowledge of the facts stated in this declaration and, if called as a witness,
16 would be competent to testify thereto.

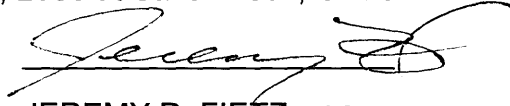
17 2. For the reasons stated in the accompanying Memorandum of Points and Authorities, I
18 believe that the above -captioned action is related to *Whitson*.

19 3. *Whitson* was initially filed in this Court on November 2, 2007.

20 4. Pursuant to Local Rule 7-11, counsel for Plaintiffs requested that counsel for Target in
21 the above-captioned matter and in *Whitson v. Bumbo* stipulate that the cases are related.
22 Counsel for Target in both cases, Gail Trabish, Esq., indicated that she would need to
23 obtain authority from her client concerning their position on this issue and requested a
24 couple of days to do so. Several days later, Ms. Trabish indicated that she was still unable
25 to take a position one way or the other concerning the propriety of relating the two cases.
26 Bumbo has not answered the Complaint, but, as a courtesy, their counsel are being served
27 the within Motion.
28

1 I declare, under penalty of perjury under the laws of the United States of America,
2 that the foregoing is true and correct.

3 Executed this 3rd day of January, 2008 at Santa Rosa, California.

4 
5 JEREMY R. FIETZ, ESQ.

PROPOSED ORDER

Pursuant to Local Rule Local Rule 3-12, the within case is hereby found related to the subsequently filed case of *Wendy Whitson v. Bumbo, et al.*, Case No. C 07-04012 CW. The *Whitson* matter will be transferred to the undersigned for further judicial management.

IT IS SO ORDERED:

Hon. Marilyn Hall Patel

United States District Court Judge

PROOF OF SERVICE

I am employed in the City and County of Santa Rosa, State of California. I am over the age of 18 and not a party to the within action. My business address is 408 College Avenue, Santa Rosa, California 95401. I served the foregoing document(s) described as:

ADMINISTRATIVE MOTION TO RELATE CASES

on the interested parties by placing () the original (X) a true and correct copy thereof in a sealed envelope addressed as follows:

GAIL C. TRABISH, ESQ.
BOORNAZIAN, JENSEN & GARTHE
555 12th Street, Suite 1800
P. O. Box 12925
Oakland, CA 94604-2925
Telephone: (510) 834-4350
Facsimile: (510) 839-1897

ROD D. MARGO, ESQ.
CONDON & FORSYTH LLP
1901 Avenue of the Stars, Suite 850
Los Angeles, CA 90067-60102925
Telephone: (310) 557-2030
Facsimile: (310) 557-1299

Attorneys for Bumbo Defendants

Attorneys for Target Corporation



VIA OVERNIGHT MAIL:

BY DELIVERING SUCH DOCUMENTS TO AN OVERNIGHT MAIL SERVICE OR AN AUTHORIZED COURIER IN AN ENVELOPE OR PACKAGE DESIGNATED BY THE EXPRESS SERVICE COURIER ADDRESSED TO THE PERSON(S) ON WHOM IT IS TO BE SERVED.



FEDERAL:

I DECLARE THAT I AM EMPLOYED IN THE OFFICE OF A MEMBER OF THE BAR OF THIS COURT AT WHOSE DIRECTION THE SERVICE WAS MADE.

I declare under penalty of perjury under the laws of the state of California, and United States of America that the above is true and correct and was executed on January 3, 2008.



JEREMY R. FIETZ, ESQ.